

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1371 of 1986

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RMKHILADI PURANSING

Versus

KANTILAL KESHAVALAL

Appearance:

MR EE SAIYED for Petitioner

MR GIRISH D BHATT for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/04/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, at the instance of the original defendant-tenant.

2. The respondent-plaintiff-landlord had filed a suit for decree of eviction against the defendant-tenant before the Rent Court, on the ground that the tenant was in arrears of rent of more than six months i.e. from 1st October 1982 in respect of which a notice of termination

of tenancy has been served upon him, and inspite of the service of the said notice the appellant had neither paid the arrears nor vacated the premises, neither did he reply to the said notice.

3. It is pertinent to note that the defendant-tenant had been duly served with the summons in the suit, but he failed to appear in the proceedings which proceeded exparte resulting in a decree passed by the trial court.

4. The tenant thereupon preferred an appeal which is also dismissed.

5. The present revision, therefore, challenges the concurrent findings of fact recorded by the two courts below.

6. The jurisdiction of this court in a revision under section 29(2) of the Bombay Rent Act is extremely limited. The Supreme Court has laid down the scope and powers of the High Court while entertaining such revisions under section 29(2) of the Bombay Rent Act. The Supreme Court in the case of Patel Valmik Himatlal & Ors. Vs. Patel Mohanlal Muljibhai (1998(2) GLH 736) = AIR 1998 SC 3325), while approving and reiterating the principles laid down in its earlier decision in the case of Helper Girdharbhai Vs. Saiyad Hohmad Mirasaheb Kadri (AIR 1987 SC 1782), held that High Court cannot function as a court of appeal, cannot reapprciate the evidence on record, cannot discard concurrent findings of fact based on evidence recorded by the courts below, and cannot interfere on grounds of inadequacy or insufficiency of evidence, and cannot interfere, except in cases where conclusions drawn by the courts below are on the basis of no evidence at all, or are perverse. A different interpretation on facts is also not possible merely because another view on the same set of facts may just be possible.

7. The only salient feature which requires to be noted is the contention raised in the appeal by the tenant to the effect that there is a serious controversy as regards the service of the suit summons upon the defendant-tenant. Both the trial court as also the lower appellate court have applied their mind to the detailed facts of the case and have come to the conclusion that the suit notice was sent by registered post AD, that it was addressed to the correct address of the defendant-tenant, and that it was returned to the landlord-plaintiff bearing an endorsement "refused". Both the courts below have, therefore, raised a

presumption under section 114 of the Evidence Act read with section 28 of the Bombay General Clauses Act. No doubt, these presumptions are rebuttable. But the defendant-tenant has not made any attempt to rebut the presumptions. Even in appeal the tenant made no attempt to lead evidence to rebut these presumptions, with a view to establish that the notice was not attempted to be served on him and/or that the endorsement of "refused" was in any way erroneous, wrong or false.

8. Once it is found that the defendant-tenant was duly served with the suit summons and that he failed to appear and put in a defence, both the courts were justified in holding that there is no legitimate reason for not accepting the evidence led by the plaintiff-landlord. In this context the oral deposition of the plaintiff-landlord establishes that there is no legitimate dispute as to standard rent, which had been fixed earlier in a prior proceeding, that the defendant-tenant was in arrears of rent from 1st October 1982 to 31st March 1983, and inspite of the notice Exh.12 having been served upon him, he neglected to pay the arrears and/or to deposit the same in the court within 30 days of the suit notice. It was, therefore, obvious that the two courts below found it a case to be governed by section 12(3)(a) of the Bombay Rent Act, and in view of the admitted fact that the tenant has neither paid nor deposited the amount within 30 days of the statutory notice, a decree for eviction must follow.

9. In the premises aforesaid I see no reason to exercise the discretionary jurisdiction under section 29(2) of the Bombay Rent Act to interfere with the concurrent findings of fact recorded by the two courts below. There is no substance in the present revision and the same is, therefore, dismissed. Rule is discharged with no order as to costs. Ad interim relief stands vacated.

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